

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on October 29, 2007 appellant, then a 22-year-old letter carrier sustained an open wound without complications and a contusion of the right arm when she was bitten by a dog while delivering mail on her route. She stopped work on October 29, 2007 and returned to light-duty work on November 26, 2007. Appellant returned to her regular work duties on October 19, 2008.

On February 4, 2008 appellant filed a CA-7 form for a schedule award.

In medical reports dated December 6, 2007, Dr. Guy J. Racette, an attending Board-certified family practitioner, noted that appellant did not complain about any pain. He listed his normal findings on physical examination and diagnosed dog bite and complicated laceration of the right upper arm and elbow, and resolved cellulitis of the right elbow. Dr. Racette advised that appellant had reached maximum medical improvement and could return to work with no physical restrictions as of the date of his examination. He determined that she had no permanent impairment of the right upper extremity causally related to the October 29, 2007 employment injury under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Racette concluded that no further medical treatment was necessary.

On April 30, 2009 Dr. R. Meador, OWCP's medical adviser, reviewed the medical record including Dr. Racette's December 6, 2007 findings. He concluded that appellant did not sustain any permanent impairment of the right upper extremity based on the fifth edition of the A.M.A., *Guides*.

In a February 8, 2010 decision, OWCP denied appellant's claim for a schedule award. The medical evidence established that she did not sustain any permanent impairment of the right upper extremity based on the fifth edition of the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁴ However, neither FECA nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment⁵ and the Board has concurred

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.404.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ *Supra* note 3.

in such adoption.⁶ For decisions issued after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.⁸

A claimant seeking schedule award compensation under FECA has the burden of establishing the claim by the weight of the reliable, probative and substantial evidence.⁹ The degree of any functional impairment is a medical question that can be established by medical evidence from a physician.¹⁰

ANALYSIS

OWCP accepted that appellant sustained an open wound without complications and a contusion of the right arm while in the performance of duty on October 29, 2007. Appellant claimed a schedule award for permanent impairment to her right arm.

The Board finds that there is no medical evidence to establish permanent impairment based on the accepted open wound without complications and contusion of the right arm. Dr. Racette, the attending Board-certified family practitioner, conducted a completely normal examination of the right arm on December 6, 2007. He released appellant to return work stating that, she had no physical restrictions or impairment rating. Dr. Racette advised that no further medical treatment was necessary. On April 30, 2009 Dr. Meador, OWCP's medical adviser, properly reviewed Dr. Racette's findings to conclude that appellant had no impairment under the fifth edition of the A.M.A., *Guides*.¹¹

OWCP, however, erred in determining that appellant had no ratable impairment pursuant to the fifth edition of the A.M.A., *Guides* because the sixth edition of the A.M.A., *Guides* became effective May 1, 2009. FECA Bulletin No. 09-03 issued on March 15, 2009 provides that any initial schedule award decision issued by OWCP on or after May 1, 2009 will be based on the sixth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date.¹² Therefore, OWCP should have used the sixth edition of the A.M.A., *Guides* in determining appellant's entitlement to a schedule award. However, this error is harmless

⁶ See *Tommy R. Martin*, 56 ECAB 273 at 275-76 (2005).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009, expired May 1, 2010); see also *id.* at Chapter 3.700, Exhibit 1 (January 2010).

⁹ See *D.H.*, 58 ECAB 358 (2007); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

¹⁰ See *R.S.*, 58 ECAB 362 (2007).

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *L.H.*, 58 ECAB 561 (2007) (FECA's procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*).

¹² *Supra* note 8.

because appellant's lack of right upper extremity impairment, as reported by appellant's attending physician, Dr. Racette, and concurred by OWCP's medical adviser, Dr. Meador, would have been the same if calculated under the sixth edition of the A.M.A., *Guides*, i.e., no impairment.

The Board finds that appellant has no impairment entitling her to a schedule award. The Board will therefore affirm OWCP's February 8, 2010 decision.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award for her right arm resulting from her October 29, 2007 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board